

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 606 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF DECEASED SUNDARLAL MOHANLAL

Versus

RANJITLAL I BIDIWALA

Appearance:

MR R N SHAH for Petitioners

MR NALIN K THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/02/2000

ORAL JUDGEMENT

#. The present revision application has been filed by the original defendant against whom the present opponent had filed the suit being Regular Civil Suit No.374/80 in the court of Civil Judge, Junior Division, at Ankleshwar. The case of the plaintiff in the said suit was that the plaintiff is the owner of the suit premises situated at Hajan Khadki in Ankleshwar Town having City Survey No.2513. That the said property was given to the defendant at the monthly rent of Rs.5.75/- for the purpose of her residence. According to the plaintiff the defendant was irregular in payment of rent and that she was in arrears of rent from 16.7.1972 for the period of more than six months. It was also the case of the plaintiff that the defendant is not using the suit premises for a continuous period of six months preceding the date of the suit. It was also one of the ground that the defendant has acquired suitable residence bearing City Survey No.3596 which is situated at Station Road, Opp. S.T.Bus Stand, Ankleshwar Town. Therefore on the aforesaid grounds the suit for possession was filed.

#. The defendant appeared in the suit and resisted the suit by filing Written Statement at Ex.11. The aforesaid suit was resisted on various grounds. It was stated that the defendant was ready and willing to pay the rent. That she has not acquired alternative accommodation as contemplated by Sec.13(1)(L) of the Rent Act and said house is occupied by her son-in-law and that the suit premises is continuously used and that therefore there was no question of non user. The learned trial judge after recording the evidence and hearing the arguments of both the sides dismissed the suit for possession by his judgment and decree dtd.31.12.1983. The aforesaid decree of the trial court was challenged by the plaintiff by way of preferring an appeal being Regular Civil Appeal No.15/84. The said appeal was heard by the learned 2nd Extra Asstt. Judge, Bharuch who by his judgment and order dtd.31.12.1985 allowed the same by decreeing the suit of the plaintiff for possession. The petitioner-tenant has preferred this revision application challenging the aforesaid decree of the appellate court.

#. So far as the question about the arrears of rent is concerned the appellate court found that the petitioner-tenant was ready and willing to pay the rent and that the defendant was not in arrears of rent for more than six months. Even regarding non user also the appellate court found against the plaintiff. However, the appellate court reversed the findings of the trial court regarding acquisition of suitable premises. The appellate court found that the tenant has acquired

alternative suitable residence and therefore the tenant was required to be evicted under Sec.13 (1) (L) of the Rent Act and on the aforesaid ground the appellate court reversed the decree of the trial court and decreed the suit of the plaintiff for possession.

#. At the time of hearing of the revision application it has been argued by Mr.Shah, learned counsel for the petitioner that so far as the finding of the appellate court regarding suitable alternative accommodation is concerned, it is not correct and the said finding is required to be interfered with by this court while exercising revisional jurisdiction. According to Mr.Shah, so far as alternative accommodation is concerned the son-in-law of the defendant is staying in the same and therefore it cannot be said that the said accommodation can be said to be suitable accommodation. It was also argued that in the rented premises the nephew of the defendant was residing since beginning and therefore assuming that the defendant has acquired alternative suitable accommodation then also no decree on the aforesaid ground can be passed.

#. So far as the alternative accommodation is concerned the said premises is situated at Station Road, Ankleshwar. The learned appellate judge has given categorical finding regarding the nature of the alternative premises in para 12 of his order. The said premises originally belonged to the brother of the defendant i.e. Pranjivandas. said Pranjivandas was not having any heirs and therefore he bequeathed the said property to the present defendant. It is found that she has already shifted from the rented premises and that she had gone to reside in the new premises. The version of the defendant that her son-in-law was residing in the premises as a tenant was not correct and on correct interpretation of the evidence the appellate court came to the conclusion in para 12 of his judgment that the defendant had acquired alternative suitable accommodation for herself. The description of the property is also given by the learned appellate judge in para 12 of his judgment. It has been found that there are three rooms on the first floor and there are three rooms on the 2nd floor in the newly acquired premises. Not only that it has been found that the defendant has actually shifted in the same. It has also been found that so far as the nephew of the defendant is concerned he was staying with the defendant from the beginning and that he was not independent tenant in the suit premises. Considering all the aspects of the case the appellate court came to the conclusion that the defendant has acquired alternative

accommodation and I do not see any infirmity in the aforesaid judgment of the appellate court. The appellate court has minutely considered the evidence on record. This court while sitting in revision cannot reappreciate evidence but even if it is reappreciated then also the view taken by the appellate judge is required to be confirmed. In that view of the matter, I do not find any merit in this revision application. Accordingly this revision application is dismissed. Rule discharged with no order as to costs.

#. At this stage Mr.Shah has requested for granting some time for vacating the suit premises. He submitted that the nephew of the original tenant is residing in the suit premises and he will have to find alternative accommodation. According to Mr.Shah his financial condition is also very weak. In the facts and circumstances of the case the petitioner is granted time to vacate the suit premises upto 31st July, 2001. The aforesaid time is granted on condition that the petitioner shall file a usual undertaking before this court within six weeks from today. In the said undertaking the petitioner shall clearly mentioned that the possession of the suit premises will be handed to the landlord on or before the aforesaid date, if there is any breach of the said undertaking it will be open for the respondent-landlord to execute the decree for possession forthwith. The rule is accordingly discharged. Interim relief shall stand vacated. No order as to costs.

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